

- Require land use permit with site plan review for all development. Response: We do not support a proposal that would require site plan review considering the similarity in equipment that is used on CBM wells. There would be very little value for this process for wellsites. CBM associated projects that require major facility application review utilize site plans because of their unique nature involving this type of equipment.
- Make performance-based standards more detailed and specific. Response: we believe the performance-based standards that oil and gas facilities must meet under existing County code are specific enough. We cannot comment on this approach for other land uses in the County.
- Require notification of owners of residences within 1,000 feet of well locations. Response: This would reduce the current notification from ¼ mile (1,320 feet) to 1,000 feet. We can support this proposal.
- Expand flood hazard areas overlay district to include riparian areas and visual corridor areas with overlay districts. Response: We support efforts to disperse information regarding sensitive areas of the County to interested parties.
- Provide mechanisms for participation of nearby landowners in facilities siting through permitting or onsite inspection process. Response: First, there is no definition of “nearby landowners”. Secondly, as stated earlier, we do not see the benefit of routine onsite inspections for CBM projects, especially wells, where the frequency of conflict is low. We do not support this recommendation.
- Require minimum setbacks for new residences from existing oil and gas facilities and show setbacks on plat maps. Response: We support this proposal for reasons of public safety.
- Require well windows for existing leases to be shown on plat maps, provide disclosure at the time of property sale, or provide CBM development overlay district. Response: The well windows are available from the COGCC, so this recommendation is viable. We support any effort to require disclosure at time of property sale by realtors that a tract of land contains a mineral lease and a potential well window.
- Define methane seepage or geologic hazard area overlay district 2 miles from outcrop, which would prohibit residential development in this area. Response: We support this effort to enhance public safety.
- Require setbacks for development for gas flowline easements. Response: We support this effort. As mentioned, industry and the County should continue a dialogue of determining acceptable setbacks.

- Increase Land use permit application fees for oil and gas facilities. Response: There is no information provided on the need to increase these fees. With this lack of information, we cannot support this recommendation.
- Require bond for successful establishment of vegetation. Response: This is not needed. The COGCC already has a reclamation bond program in place.

Socioeconomics

- Increase mill levy for property taxes on oil and gas facilities. Response: In Table 6.6, CIR Section 6.3.5.2 (page 6-23), the first option for minimizing CBM development conflicts or impacts on socioeconomic resources is to...“Increase mill levy for property taxes for oil and gas facilities.” However, the executive summary states that...

“The primary socioeconomic impacts associated with the anticipated CBM development are increased revenues to the county during the 30-year production period, primarily from property tax revenues from CBM well production sales. This impact is positive, but the property tax revenues from the CBM wells would decline gradually over time at the end of the production period.”

The assessment in Section 5.2 concludes that impacts of the Northern San Juan Basin CBM development on County facilities and services, roads and bridges, and public services would be negligible (there may be a small incremental need for County planning staff). Although no estimates of the County’s costs of providing services to the CBM industry and its employees are provided in the CIR, it is likely that the revenues associated with CBM development far exceed CBM-related expenditures by the County. If that is the case, what is the justification for increasing the mill levy on oil and gas facilities? It may be worthwhile for the County to conduct a fiscal impact assessment for CBM, to provide a realistic picture of the both the expenditures and the revenues associated with CBM development. Only then can the costs and revenues associated with future CBM development be contrasted, and the need for additional revenues to fund CBM-related expenditures calculated.

If, on the other hand, an increase in the mill levy on oil and gas facilities is being considered as a strategy for providing additional revenue to help fund *all* county expenditures, what is the justification for singling out CBM? Why aren’t mill levy increases for facilities associated with other industries considered? This option seems inequitable and may not be permissible under Colorado law. Under Colorado’s Constitution, the County cannot create an additional “class” of property for imposition of a mill levy. Thus, any increased mill levy will have to apply uniformly to all property in a given “class” (residential, commercial, or industrial), and any proposed increase must be approved by a countywide vote.

- Provide tax incentives to encourage new industry for diversification of economy.
Response: None
- Increase fees for overweight and oversize vehicles using County roads.
Response: Is CBM development providing a net positive impact to cover road impacts? If so, this proposal cannot be justified.

Property Values

- Disclosure of potential CBM development at time of property transfers.
Response: We support the disclosure of information by realtors/title companies to prospective purchasers of CBM development potential.
- Provide tax relief for properties devalued by proximity of a well. Response: We do not support the conclusion that properties are devalued when located near a well. See previous comments.

Traffic and Transportation

- Increase fees for overweight and oversize vehicles using County roads.
Response: What are the County's actual costs for maintaining roads used by overweight and oversize CBM rigs? How much does the CBM industry contribute to the Road and Bridge Fund? Is there a net revenue benefit or deficit associated with CBM? Is the increase in fees required because CBM development does not pay for the cost of road maintenance? Or is it to increase funding for all road maintenance, regardless of the source of demand?

La Plata County's road maintenance costs may have exceeded CBM-related revenues in the early years of CBM development, before significant production came on line. In those early years, substantial quantities of water were trucked to disposal sites. Currently, however, CBM-related revenues to the County are substantial. CBM operators construct and maintain roads on CBM leases and La Plata County residents use these roads for access to County roads in some cases. Many operators, if not all, repair or reimburse the County for repairs to specific roads when they are clearly damaged by heavy equipment developing or servicing CBM wells and ancillary facilities.

- Require permit fee (fine) if vehicles use road without permit. Response: We assume this refers to overweight and oversize vehicles. If a permit fee is required and not obtained, a fine is appropriate.
- Require proof of liability insurance coverage to guarantee payment for damages to roads and bridges. Response: "Liability insurance" could mean many things. Are roads and bridges being impacted by oil and gas to the point that quantifiable costs for repair are known? We believe the property taxes industry pays should be used to address this issue.

- Require permits for all new roads using design specifications and performance standards, depending upon proximity of sensitive receptors. Response: Standard road designs are used for lease roads in the County. If a new road is very close to a sensitive receptor, it is likely a right-of-way must be obtained from this individual. At that time, concerns of that receptor would be addressed and incorporated into the project. County involvement in this process is not needed.
- Require operators to construct improvements directly related to operations such as graveling roads, improving sight distances, posting hazard-warning signs. Response: This recommendation must be assessed for what types of roads this would require. Typically, lease roads do not see the level of traffic where this would need to be applied. Instead, this would fall into the category of state or county roads. We believe these types of traffic improvements are the responsibility of the County or CDOT to determine and install the necessary equipment. We also caution that paving roads may not be in the best interest of road safety in every case. Paving of roads typically results in increased road speed on those segments. Depending upon the road route, this could compromise road safety.
- Agreement for preventative and corrective road and bridge maintenance of County roads used by CBM development. Response: We do not believe it is fair to isolate one industrial entity, especially when other uses may be involved with a road segment or bridge. Therefore, this type of an approach must use a methodology of assessing axle loads in order to equitably apply this recommendation. Further, we have been recently assessed road impact fees for certain major facility applications. These fees are assessed to any user, regardless of who uses the roads. This lends credibility to an approach that does not single-out one entity.
- Require permit for road use for all CBM related vehicles. Response: This is unnecessary. Most CBM traffic is light duty trucks, which do little damage to roads. This use is similar to many other trucks conducting other industrial/agricultural activities.
- More intensively enforce speed limits. Response: This is a matter for the County to address; however, our employees are cautioned to obey all posted speed limits in the County.
- Provide specific performance standards for traffic control, signage, and other traffic related impacts from oil and gas. Response: As stated previously, we do not believe singling out oil and gas for this purpose is appropriate. This type of effort should be coordinated by the County or CDOT, depending upon jurisdiction of the road, intersection, etc.

Visual Resources

- Even with the *Frederick* court decision, provided below are comments to the recommended options under visual resources:
- Provide specifications and performance standards for well siting, type and appearance, landscaping, etc. to immunize visual impacts. Response: This is already being implemented with the existing County permitting process. Anything exceeding those requirements should be circulated for public comment before implementing.

Generally speaking, the two main approaches listed in the “Approaches to Visual Mitigation” which are 1) strategically placing a site to minimize its presence to receptors and 2) using specific post construction and operations measures to screen a site and reduce the presence of the site, are being used. The site and associated equipment are already employing visual mitigation in the form of painting facilities, feathering or rounding the edges of the surface and using low profile equipment. In fact, BP has developed a color scheme for equipment that has been widely accepted by local agencies. However, many of the other mitigation techniques are site specific to a number of conditions, most notably the preference of private landowners. While every effort is made to apply these strategies, ultimately the final decision on where the well can be located rests with the landowner.

- Define and implement well siting performance standards. Response: See comment above. It should be noted that while techniques can reduce visual impacts, there are some limitations that must be considered. Using existing vegetation to screen equipment is a technique that requires a safety buffer between equipment that is fired by natural gas. Crowding equipment with existing vegetation can present a fire hazard. An adequate buffer of at least 50’ between vegetation and fired equipment must be incorporated into this type of guidance.

Avoiding straight line-of-sight road construction is preferable, but is subject to landowner concurrence. It should also be noted that this technique would result in additional surface disturbance and higher costs for constructing a longer road. Road designs take into consideration the type of equipment using the road so that proper width and surfacing material is applied.

- Define and implement performance standards for appearance of operational facilities and landscaping. Response: See comment above.
- Use a combination of well siting and performance standards for appearance of operational facilities and landscaping. Response: See comment above. Information learned from either wells or other major facilities as a best practice can be incorporated into future permits.

Noise

- Provide specifications and performance standards for type of equipment, when building enclosures are required for compressors, mufflers, etc. Response: The County does not have authority of noise, therefore, these recommendations should be removed from consideration.
- Define minimum setbacks for new development. Response: The County does not have authority for noise; therefore this recommendation should be removed from consideration. (See note referencing Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, under Noise, Lighting, Visual Obstruction/Degradation on Page 2 of this Attachment A.)
- Increase minimum setbacks for new wells for existing residences. Response: Even if the County had authority for noise, this would not be possible. Each piece of equipment emanating sound has its own levels that must be mitigated at the property line of the CBM well or facility. To try and establish a standard setback for all equipment is not possible.

Health and Safety

- Require proof of liability. Response: The COGCC already has bonding requirements. This is duplicative. (Because of the recent Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, this gives rise to operational conflicts and will require the local regulations to yield to state interests. See generally, Court of Appeals ruling, *Town of Frederick v. North American Resources Company*.)
- Require dust control, traffic control and spill and drainage control plans. Response: The County typically exercises dust control on their roads. If intensive activity were occurring on a lease road, then, depending upon the proximity of receptors, water would be applied by the company. Traffic control plans are the responsibility of the County and CDOT. Spill plans are part of a company's incident response procedures and could be reviewed by the County upon request. Drainage control plans are part of stormwater requirements of the State of Colorado. They are maintained by the company and could be reviewed by the County upon request. We do not support submitting all this information separately, particularly those parts that are specific to a particular operation.
- Increase setbacks required from property lines to minimize risks related to releases of flammable gas from wells. Response: BP has on several occasions met with County staff to review dispersion model information for accidental

releases of methane both from wells and pipelines. It is important to note that the main threat of a gas release is with a scenario that involves combustion of the gas. Wellsite release scenarios clearly show that the current 400-foot setback is too large. In fact, existing well pad dimensions should provide an adequate margin of safety in the event a gas release was ignited from a well. A dialogue on releases from both wells and pipelines need to continue between industry and the County so that setbacks and buffers protect the public but still allow for safe development of CBM.

- Charge response fees for EMS, Fire Fighting, and Hazmat for oil and gas incidents. Response: Based upon the very low frequency in responding to these incidents, a response fee is not justified.
- Hire professional, staffed employees in addition to volunteers. Response: This is a matter for the County Emergency Response to address.
- Require annual updates to electronic Emergency Preparedness Plan. Response: BP already provides a hard copy. Based on the some of the attachments that are inherent to plans, providing an electronic version of the entire contents may not be possible.
- Require geo-referenced (GIS) data for roads, wells, and pipelines as part of the annual Emergency Preparedness Plan. Response: While BP already does this, getting the information from all operators would be large tasks that could take many months, even if the companies had the financial resources.

New County Requirement for NOS for CBM Wells

Section 6.3.2.1, Page 6-33. This subsection presents the idea of the County accepting the BLM's Notice of Staking (NOS) option to better involve itself in the permitting process. It appears a belief exists that the NOS will serve as a good tool for advance notice. Using the NOS is a viable procedure necessary for federal actions, but it does not allow for any advantages to private undertakings and associated County permitting.

The reason is that BLM uses the NOS to prevent having to repeat certain field activities specific to federal requirements. Before the NOS was used, onsite would be held after archeological clearances had commenced, threatened and endangered species inventories were completed, and final survey coordinates for the site and road were finished. Invariably, during the subsequent onsite inspection, the location would need to be moved for any number of federal surface use considerations, many of which do not even apply for private undertakings. When the location was moved, these inventories had to be repeated. This delayed the APD and resulted in increased costs to the company and more time of BLM Specialists involved in the APD process. Consequently, the NOS was developed to avoid duplicative field inventory work by agreeing on a wellsite before completing all field work. It also starts into motion statutorily environmental documentation under the National Environmental Policy Act (NEPA), a requirement

neither the County or the COGCC must meet. Using the NOS had nothing to do with advance notice; it had to do with avoiding duplication of work. That is still the case. What would this process add to the current County permitting procedure? There is no need to adopt this procedure at the County level and we do not support such a proposal.

Other comments with this proposal involve the definition of what constitutes "surface ownership interests" that would be invited to an onsite inspection. This is a very broad term and could be just about anyone in the County. It is our belief that the business of siting a well and associated roads must first remain with the company and the landowner where these facilities will be located. While we are not opposed to hearing input from adjacent landowners, ultimately the final decision rests with the landowner unless there is a clear conflict with an established County code for which the County has authority.

If the County needs to be notified early, it should be using the information submitted by the companies annually to the COGCC that indicates the locations of proposed wells. This list could be evaluated to determine if any locations are in areas of "sensitivity". The County staff then could notify the operator and advise that special situations will require more time to deal with this site. Those locations could receive the requisite attention and be accounted for in scheduling activities by both industry and County staff. Burdening the entire population of proposed wells with such a proposal will not be any more effective than the current procedure.

Land Use

Section 6.3.5.1, Page 6-41, Bullet #3 and #4. We emphasize that directional or horizontal drilling has limited applicability in the study area due to the depth of the Fruitland coals and the ability to produce the wells with artificial lift. Care should be taken with these kinds of recommendations not to increase traffic on roads. Directional drilling can also require more time to drill along with more frequent maintenance, thus disrupting the surface owners more often. Could this also be under *Frederick*? (See note referencing Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, under Noise at Page 2 of this Attachment A.)

Post Construction/Operation

Section 6.3.5.4, Page 6-48. The requirement for self-sustaining vegetation as a reclamation measure that must be re-established within 3 years is acceptable in terms of full reclamation or the portion of the well pad not needed for long-term production. We are assuming this does not apply to the portion of the location needed for production operations, since to re-establish vegetation here would present a fire danger and conflict with mitigation measures on page 6-58 that recommend "keeping well sites free of flammable materials, vegetation and debris to limit the risk of wildfires."

The fourth bullet of this subsection makes reference to "using the cavitation method, instead of conventional completion to avoid the use of a pump jack." It should be noted that just because a well was cavitated does not necessarily mean that a pump jack will not

be needed. This bullet item goes on to state “this measure is most effective near high density residential land uses where utilities to run the compressor that would provide power are available”. This sentence is confusing relative to CBM operations. Compressors are not typically placed on well sites when wells are cavitated. We are curious if this reference is to the gas-fired engines/prime movers that used to actuate pump jacks, not compressor engines. Could this be referring to progressive cavity pumps instead? At a minimum, this bullet item requires clarification as to intent.

Implementation and Monitoring of Visual Mitigation

Section 6.3.5.4, Page 6-50. The mitigation checklist for CBM related development is of concern. This type of program would prevent operators from choosing equipment that is most optimum for a given well based upon reservoir characteristics. Further, there may be cases where a certain technology is more suited for a given well than another. As such, the selected approach may not be consistent with visual mitigation. This must be a consideration if this type of process is used.

Secondly, why is “cavitation” used as a +1 technique? Isn’t progressive cavity pumps intended here since it is a low profile artificial lift type of equipment? Also, what about pneumatic lift equipment? Where does it fall on the point system? What about lower profile pump jacks? What criteria are used to select a positive or negative number for this evaluation? Keep in mind that while progressive cavity pumps are low profile, they can be inherently noisy when compared to a normal pump jack engine depending on the speed they are run. It is very important to acknowledge that trade-offs are routine when dealing with mitigation efforts.

Noise

The COGCC has jurisdiction for noise associated with CBM equipment. (See note referencing Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, under Noise, Lighting, Visual Obstruction/Degradation on Page 2 of this Attachment A.) With that being the case, operators are required to meet sound thresholds as stipulated in COGCC Rule #803. It is up to the operator to determine how to meet these thresholds. There are any number of mitigation options available to accomplish this task, but these are the responsibility of the company to implement with follow-up by the COGCC.

Health and Safety

Section 63.5.4, Page 6-58. The first bullet under this section states that adequate setbacks should be used for a number of different scenarios, including minimizing risks from release of combustible gases. This section should be eliminated due to the recent court decision. (See note referencing Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, under Noise, Lighting, Visual Obstruction/Degradation on Page 2 of this Attachment A.)

BP has on several occasions met with County staff to review dispersion model information for accidental releases of methane both from wells and pipelines. It is important to note that the main threat of a gas release is with a scenario that involves combustion of the gas. Wellsite release scenarios clearly show that the current 400 foot setback is too large. In fact, existing well pad dimensions should provide an adequate margin of safety in the event a gas release was ignited from a well. A dialogue on releases from both wells and pipelines needs to continue between industry and the County so that setbacks and buffers protect the public but still allow for safe development of CBM.

Page 59 of this subsection discusses underground pipelines. The area of gas pipeline excavation incidents is of high importance. All of the recommendations in the document on page 6-59 are important. It has also been suggested in the community that an education effort be pursued regarding the importance of better understanding the extent of underground pipelines in the County and the One Call procedure that should be used by everyone before any excavation is performed. This should also be included as an alternative in this section.

References:

Section 7.0, Pages 7-1 through 7-9. We believe the number of realtors interviewed for the CIR should be expanded. For example, Coldwell Banker has 46 realtors in their office, The Wells Group has 33 and Prudential has 34 realtors and are the largest real estate offices in La Plata County. Campbell Realty has 2 realtors, R. W. Jefferies & Associates, R. E., has 1 realtor, Zartner Realty has 1 realtor and are the smallest real estate offices. It seems logical that personal interviews with the larger population of realtors is mandatory in understanding the real situation.



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ENERGY

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August 30, 2002

Mr. Adam Keller
Attn: La Plata County Planning Department
1060 East Second Avenue
Durango, CO 81301

Re: County Impact Report
La Plata County, Colorado

Dear Mr. Keller:

J. M. Huber Corporation (Huber) appreciates the opportunity to address the La Plata County Impact Report (Rough Draft) prepared by Greystone Environmental Consultants. The County Impact Report (CIR) appears to reinforce previous opinions of La Plata County (LPC) government exacerbating operational conflicts between State and County regulations. The CIR has identified the same problems with no remedies to the current stalemate. However, operational conflicts between Colorado Oil and Gas Conservation Commission (COGCC) and LPC regulations are continuing to be overturned in Courts across the State of Colorado. Operational conflicts between COGCC and LPC regulations need to yield to areas already preempted by COGCC Rules and Regulations. The complex jurisdictional relationships inherent in the planning and regulation of oil and gas activity requires extensive cooperative efforts with the COGCC prior to any La Plata County action. Current and future LPC land use regulations should be carefully reviewed for operational conflicts so that local regulations regarding oil and gas activities yield to the state interest, including the areas of setbacks, visual impacts and any reference to noise.

Surface and mineral rights have become a very perplexing problem to many landowners especially where the surface estate has been severed from the mineral estate. Most surface owners do not realize that the "dominant estate" is the mineral estate meaning that the mineral estate can use a reasonable portion of the surface to develop the mineral estate. The fact that a surface owner and a severed mineral owner do not have an absolute right to exclude the other from the surface creates tension between competing surface uses. Surface owners need to be made aware of mineral estate laws and the law of reasonable use prior to purchasing the surface estate. Huber continues to encounter surface landowners that have purchased land without understanding the significance of the "dominant estate" and end up being very bitter towards Huber.

Current La Plata County Oil and Gas Regulations are designed to regulate and manage oil and gas development. The codes are not designed to prohibit development, although most surface landowners interpret the codes as a means to prohibit oil and gas development. Many LPC regulations pit one neighbor against another neighbor due to the conflicting regulations. At a minimum, operational conflicts between COGCC and LPC regulations need to yield to areas already preempted by COGCC Rules and Regulations including spacing, noise abatement, visual mitigation, pumping units versus PC pumps, electric versus gas engines and other contentious items.

Huber supports the La Plata County Energy Council's (LPCEC) letter and attachments transmitted under separate cover letter dated August 30, 2002. In addition to LPCEC comments, Huber wishes to address a few contentious items including property values, road maintenance, noise abatement and visual mitigation as follows.

Property Values

The San Juan Citizen's Alliance two-page advertisement in the Durango Herald on Sunday, August 25, 2002 and Mark Pearson's "Thinking Green" editorial in the Durango Herald on Thursday, August 29, 2002 provides misleading facts due to the draft CIR. Both articles indicate that a new La Plata County study shows that nearby gas wells reduce property values \$70,000 to \$100,000. Actually, the CIR states " *The results from the modeling effort prepared by BBC Research and Consulting indicated that in general, the proximity of one or more CBM wells to a residential property had a small effect on property sales values: on average, properties near wells may have a sales value less than one percent lower than properties that are not near wells. Although the overall property values in the study area have not been significantly (less than 1 percent) affected by CBM wells, the model indicates that properties with a CBM well located on them (12 of 754 properties studied) have a net reduction in sales value of 22 percent*". Huber has always obtained a Surface Use Agreement prior to commencing operations on a landowner's property. The Surface Use Agreement specifies damage payments based in part on the value of the land to compensate the landowner for oil and gas operations.

Huber has purchased three different properties over the last 12 years (1990, 1999 & 2000) as operations have dictated. These purchases have amounted to 70 acres, 25 acres and 10 acres, respectively. These investments have proved to be very attractive indeed. Huber has been approached on all three investments to sell at values similar to recent sales in the immediate area, but elected to retain the property for future contingency plans.

Road Maintenance

County road maintenance continues to be a contentious item between Operators, La Plata County Road and Bridge and county citizens. The CIR recognizes that any impact in traffic volume from CBM development is minimal at less than 1%. Huber concurs with this assessment and believes that traffic volumes and other industries (concrete trucks, eighteen-wheel delivery trucks, etc.) cause more damage than drilling, completion and producing operations.

As an example, Huber operates the Johnson #1-33 and Rhoades #3-33 on East Pioneer Drive. Approximately twenty additional households live along and beyond our wells. Statistics indicate that each residence will make at least 4 round trips per day out and back or a total of 160 one-way trips per day. Huber will make one trip in and one trip out for a total of 2 one-way trips per day. Huber utilizes the road approximately 1.24% (2 / 162). Huber continues to maintain the road from the intersection with CR #225 to the entrance to the Huber operated Rhoades #3-33 well. La Plata County Road and Bridge Department administers very little road maintenance in this case. Huber routinely maintains the road twice per year along with snow removal during the winter.

Huber would be receptive to joining each Homeowners Association and participating with monthly dues as appropriate. Although we utilize the road much less than the other residences, our monthly dues would increase / decrease as the Homeowners Association maintained the road. Generally, this approach has not been successful, as residences believe that Huber should pay for all maintenance costs.

Noise Abatement and Visual Mitigation

COGCC regulations clearly regulate the noise levels at which mitigation must occur. Huber has always operated within the regulations (< 50 dBA's) and generally less than 40 dBA at the property line or residential structure. La Plata County has tried again and again to enforce stricter noise regulations to no avail. La Plata County repealed their sound regulations of 45 dBA's on February 2, 1999 by Resolution 1999-9 due to impending decision by La Plata County District Court in the *COGA v. La Plata County* case. Noise levels are preempted by COGCC Rules and Regulations and should be eliminated from LPC regulations.

The recent Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, stated "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as imposition of safety regulation or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interests. Bowen / Edwards, supra, 803 P.2d at 1060, such is the case with the setback, noise abatement and visual impact provisions invalidated by the trial court here. Thus, the ordinance sections that the trial court invalidated are preempted on the basis of operational conflict".

Each individual landowner should take the opportunity to work with the operator to minimize the visual aspect. Many of the visual aspects come at the expense of other tradeoffs that are just as important to the landowner, offset landowners or La Plata County Planning Department. Unfortunately, LPC is attempting to write regulations that will appease most citizens but in many cases pits one neighbor against another neighbor.

Huber recognizes that our operations are within a populated part of La Plata County and strive to minimize our impacts while recognizing that mineral owners also have rights. Huber is very proud of our operations, our environmental record and our dealings with surface owners.

Please feel free to contact Thomas M. Erwin at 970-247-7708 if you have any questions concerning Huber's rights under its existing Oil, Gas and Mineral Leases.

Very Truly Yours,

J. M. HUBER CORPORATION

Thomas M. Erwin, P. E.
Southern Rockies Operations Manager

cc: Mr. J. Scott Zimmerman - J. M. Huber Corporation
Mr. David A. Gomendi - J. M. Huber Corporation
Mr. Michael J. Wozniak - Dorsey & Whitney LLC
Christi Zeller - LPCEC

August 30, 2002

Mr. Adam Keller
1060 E. 2nd Avenue
Durango, CO 81301

Re: Draft La Plata County Oil and Gas Impact Report

Dear Mr. Keller:

I greatly appreciate the opportunity to review and comment on the Subject report. It appears that a great deal of time and effort went into the preparation of the report.

Much of the information presented in the report is quite enlightening. For instance, I didn't know that the gas industry only supports one percent of the "total basic employment" in the county. What's really amazing, though, is that such a small employment base can support such a large portion (nearly fifty percent) of the county's tax revenues. If we could just get one more industry that would contribute the same percentage to the property tax base, La Plata County citizens would have virtually no property tax. What other industry could have the same positive "socioeconomic impact"? I was also surprised to see the report admit that "public health risks associated with (the Fruitland) formation (were) documented before CBM development began include (ing) methane and hydrogen sulfide gas seepage into domestic water wells and residences, dying vegetation, coal fires along the outcrop, and coal mine explosions." These and other nuggets of unpublicized information make the report quite interesting.

Unfortunately, I must say that I am quite disappointed in the majority of the conclusions and recommendations presented in the report. Perhaps my expectations were too high, but I sincerely hoped that the authors would be presenting a balanced review of the adequacy of existing regulations and the benefits the CMB industry provides to La Plata County residents. I also hoped that the CIR would consider proposals to improve the impact on the citizens of the County **AND** the gas industry, as well as the government of the County. Many, if not most of the recommendations, either put more burdens on the industry or the citizens of the County or the County government itself. Some would increase the burdens on all three without any real positive impact on the problem being addressed. Most impose more burdens on the industry without recognizing the negative impacts they would have on the County and its citizens.

Furthermore, reading the report, I often get the impression that the recommendations are being presented to a totalitarian government. Frequently, the recommendations totally disregard the Constitutional rights of both citizens and the

industry. While it is true that some of the recommendations acknowledge a curtailment of individual rights, no effort is made to mitigate that curtailment or protect those rights.

I will attempt to give examples of this type of recommendation and also present at least one alternative that should have been examined as part of the study later in this review. Due to the length and breadth of the report, I will not be able to respond to every single recommendation or conclusion that is, in my opinion, flawed. Instead, I will attempt to give enough examples to illustrate the overall weakness of the report.

One more general comment before I address specific issues and recommendations with regard to the draft report. The stated goal of the report is to “develop ways to mitigate potential conflict between CBM development and other land uses”. Unfortunately, the report goes on to narrow this scope by stating that the “purpose of the CIR is to evaluate and identify possible amendments to the La Plata County Land Use Code that could be employed to minimize conflicts between residential land use and development of natural gas”. This narrowing of the scope of the CIR is unfortunate because it implies that the best way to minimize conflicts is through new rules and regulations. Such an approach is not always best. In fact, in many situations it takes a bad situation and makes it much worse, especially when the focus is on only one of the involved parties. It is especially galling, because no attempt was made to determine the impact of existing regulations on future development.

Now, on to specific comments :

In reference to Section 3.1.3 (page 3-7), a recent decision by the Colorado Court of Appeals (*Town of Frederick v. North American Resources Company*) has significantly narrowed the authority of the county to regulate oil and gas development. This decision should be reviewed and incorporated into the CIR.

In the same Section 3.1.3 (page 3-9) under the subheading “Surface Rights vs. Mineral Rights”, the authors fail to mention that the vast majority of operators in the San Juan Basin not only voluntarily negotiate surface use agreements with landowners, but also pay “damages” (or some other compensation) to the landowners for the use of their surface in the drilling, completion and production of the wells. Generally, it is only when a landowner refuses to negotiate a surface use agreement that an operator will post a bond and drill a well without such an agreement.

In Section 3.2.7.3 (page 3-53) the CIR indicates that a reduction in the value of property occurred when a CBM well was located on the property. The CIR states that the dozen properties containing a well (out of 754 total properties sold, which is a paltry 1.6% of the sample) sold during the eleven year period ending in 2000, showed an average reduction in value of “\$68,100 or 22 about percent”. However, the study does not indicate whether any of these properties included the sale of the mineral rights, or if those rights had been previously severed or were being severed during the specified sale. Furthermore, it does not indicate whether these 12 properties sold during a specified time period which may have coincided with either a recession in the housing market or an

extremely active time in the drilling of CBM wells. Keep in mind that the vast majority of CBM activity occurred after 1991. Why did the CIR look at a 1989 beginning date for the analysis? Were the properties sold under some kind of fire-sale conditions? Were those conditions related to the CBM industry? If so, how? If not, what other events may have caused those conditions?

Table 3-40 grossly exaggerates the trip frequency for field development and operations in at least fifteen different activity categories. It appears that the CIR utilized information from a single major operator and assumed that all operators require the same time frame and procedures to construct a CBM well and associated facilities. Of course, this assumption is false and could easily lead to an exaggerated estimation of trip frequency, among a number of other erroneous conclusions.

Table 4-2 seems to indicate that each compressor facility will result in the disturbance of more than 6.5 acres of surface lands. Maralex has constructed numerous compressor facilities in the San Juan Basin and has never disturbed more than one acre of land in the construction of any of those facilities. Further, the time cited to construct a compressor facility (one to two months, page 5-64) is much more than double (on the low side) the maximum time Maralex has ever expended to construct such a facility.

The CIR appears to contradict itself in a number of instances, especially as related to timing. For instance, in Section 5.1.2, the CIR seems to imply that drilling a CBM development well will take about two months. However in Section 5.5.2 on page 5-64 the CIR states that, "These noise levels would be experienced for 24 hours per day for the 1 to 4 days generally needed to drill a CBM well". Another example can be cited with regard to the development period. The CIR repeatedly cites a ten-year development period (beginning immediately). However, on page 5-35, the CIR abruptly changes to an "estimated 17-year life of CBM development".

Much more serious contradictions occur in the CIR when it attempts to recommend that the industry be subjected to increased impact fees and/or road use permit fees. This is in spite of the fact that the CIR explicitly admits "There would be no discernible impact to daily traffic volumes from CBM vehicles (page 5-31)" and "...there would be no perceivable impact to traffic on county roads in the study area (page 5-33)". Furthermore, the CIR also explicitly admits, "... any increased expenditures associated with ... development of CBM would be offset by the increased property taxes and energy impact grants that result" from CBM development (page 5-24).

As stated earlier the CIR makes no attempt to honor the Constitutional Rights of the County's citizens. Where the CIR recommends that the County "require ... that the developer convey sufficient land ... to the county" (Section 6.3.4.2, page 6-37) or "define districts... where residential development could be limited (Section 6.3.5.1, page 6-39)", it is recommending a taking of the landowner's property in direct violation of the Fifth Amendment to the Constitution. If the CIR is going to make such a recommendation, it needs to also recommend a procedure to determine the value of the land that the County is taking to properly compensate the landowner for that taking. Similarly, when the CIR

recommends “increasing fees” on the CBM industry, whether it be new land-use fees, vehicle permit fees, road use fees, or any other type of fee applied directly and discriminatorily to only the CBM industry, the CIR is recommending a breach of the equal protection clause of the Fourteenth Amendment. Such fees must be applied indiscriminately in order to pass Constitutional muster.

There are a large number of other areas that I would like to comment on. However, time constrains me to end my comments at this point. However, I want to direct your attention to the LPCEC comments provided on August 30, 2002. Maralex is a member of the La Plata County Energy Council and we specifically support the comments the Energy Council submitted in Attachments A and B provided to you. Due to the serious flaws of this very expensive CIR, we respectfully request a time line, with proposed procedures, that the County intends to implement to address future corrections to this draft.

Thank you for considering my comments and the opportunity to present them to you. We look forward to continuing our amiable relationship with the County and its Citizens and are available to answer any questions you may have concerning these comments.

Sincerely,

Maralex Resources, Inc.

A. M. O’Hare, P.E.
President

**ELM RIDGE RESOURCES, INC.
12225 GREENVILLE AVENUE, SUITE 950
DALLAS, TEXAS 75243**

(972) 889 -2100

August 30, 2002

Mr. Adam Keller
1060 E 2nd Avenue
Durango, CO 81301

RE: Comments on the Draft La Plata County Oil and Gas Impact Report

Dear Mr. Keller:

This letter is to support the letter provided to you by the La Plata County Energy Council dated August 30, 2002. Elm Ridge Resources, Inc. is a member of The La Plata Energy Council and we agree with the comments to the June 2002 Draft of the La Plata County Impact Report (CIR) submitted by the Energy Council.

The Draft CIR suggests that La Plata County could regulate aspects of CBM development (setbacks, visual, noise, safety) that are statutorily reserved for state regulation. The state's responsibility for regulating these aspects of has recently been reaffirmed by the courts.

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Because of the recent Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as imposition of safety regulation or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interests. Bowen/Edwards, supra, 803 P.2d at 1060, such is the case with the setback, noise abatement, and visual impact provisions invalidated by the trial court here. Thus, the ordinance sections that the trial court invalidated are preempted on the basis of operational conflict."

Our overriding opinion is that La Plata County's attempts to regulate in these areas would be invalid. We are particularly concerned that such a large portion of this **\$350,000** Impact Report (funded by a **\$175,000** Department of Local Affairs Energy Impact Grant, **\$121,000** in La Plata County matching funds and **\$54,000** in kind services provided by the county) suggests options for regulating CBM development that are clearly not within the county's jurisdiction under Colorado law.

We specifically support the Energy Council comments in Attachments A and B provided to you. Because of some major concerns/errors/flaws in the CIR, we would like you to prepare a

time line with procedures to address topics, for meetings and for corrections to this draft. If you do not plan to finish this CIR we need to know that, also.

Thank you for considering our comments. We have worked constructively with local elected officials and county departments on oil and gas matters and we look forward to continuing a cooperative effort to modify oil and gas regulations and this Draft CIR. We are an important contributor to the local economy, striving to develop cleaner energy and assist in achieving our nation's goal of greater energy independence.

Sincerely,

James M. Clark, Jr.,
President – Elm Ridge Resources, Inc.



Conoco Inc.
P.O. Box 2197
Houston, TX 77252

August 30, 2002

Mr. Adam Keller
Planning Department
La Plata County
1060 E 2'nd Avenue
Durango, CO 81301

RE : Comments on the Draft La Plata County Oil and Gas Impact Report

Dear Mr. Keller:

Conoco Inc. appreciates the opportunity to submit these comments on the draft La Plata County Oil and Gas Impact Report. Conoco Inc. operates approximately sixty Fruitland Coal Bed Methane producing wells in T 33 N, R 9 & 10 W, and T 34 N, R 9 & 10 W, all located South of the Ute Line in La Plata County Colorado. We are proud to be an important contributor to the local economy, striving to develop cleaner energy and assist in achieving our nation's goal of greater energy independence, all within a sustainable development framework.

We support the letter provided to you by the La Plata County Energy Council dated August 30, 2002. Conoco Inc. is a member of the La Plata County Energy Council and we agree with the comments to the June 2002 Draft of the La Plata County Impact Report (CIR) submitted by the Energy Council.

Conoco Inc. believes that current La Plata County land use regulations should be carefully reviewed for operational conflicts so that local regulations regarding oil and gas activities yield to the State oil and gas conservation commission interest, including the areas of setback, visual impacts and any reference to noise, which are preempted from local regulation. We believe that the portions of the Draft La Plata County Impact Report, which include recommendations and options regarding setbacks, noise and visual impacts, should not be used for comprehensive planning purposes, nor for the

development of future oil and gas regulations. Out of respect to the county taxpayers, it seems appropriate to limit areas of county regulation to those that are acceptable under state statutes and the recent Colorado Court of Appeals decision, *Town of Frederick v. North American Resources Company*.

Conoco Inc. appreciates the opportunity to provide these comments for your consideration. Should you have any questions, please call me at 832-486-2325.

David L. Wacker
Sr. Regulatory Consultant

COLORADO OIL & GAS ASSOCIATION

Mr. Adam Keller
1060 E 2nd Avenue
Durango, CO 81301

August 30, 2002

Re: Comments on the Draft La Plata County Oil and Gas Impact Report

By this letter COGA endorses the comprehensive comments provided to you by the La Plata County Energy Council, dated August 30, 2002, relating to the June 2002 Draft of the La Plata County Impact Report (CIR) submitted by the Energy Council.

In COGA's opinion, the CIR is fundamentally flawed. As demonstrated in the LPCEC's comments, its analysis of impacts, costs and benefits is incomplete, misleading and biased. Rather than an impacts analysis, this document is largely a wish list of possible regulatory initiatives that ignores limitations on the county's authority derived from applicable statutory and case law. It ignores the existence of a myriad of existing federal and state regulatory provisions that already address many of the alleged issues of concern. It contains suggestions, such as singling out oil and gas production for non-uniform taxation, that are prohibited by the Colorado Constitution.

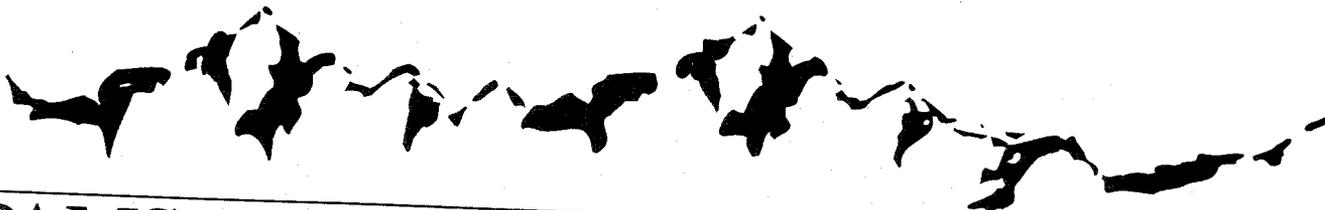
The recent Court of Appeals ruling in *Town of Frederick v. North American Resources Company* makes it clear that "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as imposition of safety regulation or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interests. . . . Such is the case with the setback, noise abatement, and visual impact provisions invalidated by the trial court here." Nor may the County usurp the COGCC's regulatory function by the expedient of adopting or incorporating its rules. Nor may the County change the common law of mineral ownership and development, as it unsuccessfully attempted to do in the past.

It is time for La Plata County to recognize the limitations on its authority over oil and gas development. We are particularly concerned that such a large portion of this \$350,000 Impact Report -- funded in part by a \$175,000 Department of Local Affairs Energy Impact Grant that COGA opposed in the first instance -- consists of options for regulating CBM development that are clearly not within the county's jurisdiction under Colorado law.

In summary, the Draft CIR is so fundamentally flawed that it should be abandoned as the basis for future County land use planning and regulation. Nor does it have any credibility as the basis for input to the Northern San Juan Basin EIS.

Sincerely,

Kenneth A. Wonstolen
Senior Vice President & General Counsel

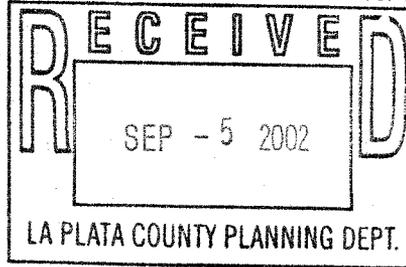


IPAMS
Independent
Petroleum
Association
of
Mountain
States

620 Denver Club Building ♦ 518 17th Street ♦ Denver, Colorado 80202-4167 ♦ 303/623-0987 ♦ FAX: 303/893-0709 ♦ www.ipams.org

August 30, 2002

Mr. Adam Keller
1060 E 2nd Avenue
Durango, CO 81301



RE: Comments on the Draft La Plata County Oil and Gas Impact Report

OFFICERS & STAFF

Dear Mr. Keller:

The Independent Petroleum Association of Mountain States (IPAMS) appreciates the opportunity to comment on the La Plata County CIR and respectfully requests that La Plata County Consider the following letter of support. IPAMS is the regional trade association in the Rocky Mountains that represents the interests of over 400 independent natural gas and oil producers, royalty owners, industry consultants, and service and supply companies operating in a thirteen-state region that includes the States of Wyoming, Nebraska, New Mexico, **Colorado**, Montana, North Dakota, Utah, South Dakota, Nevada, Arizona, Idaho, Washington and Oregon. IPAMS supports the letter provided to you by the La Plata County Energy Council dated August 30, 2002. IPAMS is a cooperating member of The La Plata Energy Council and we agree with the comments to the June 2002 Draft of the La Plata County Impact Report (CIR) submitted by the Energy Council.

The Draft CIR suggests that La Plata County could regulate aspects of CBM development (setbacks, visual, noise, safety) that are statutorily reserved for state regulation. The state's responsibility for regulating these aspects of has recently been reaffirmed by the courts.

Because of the recent Court of Appeals ruling, *Town of Frederick v. North American Resources Company*, "the local imposition of technical conditions on well drilling where no such conditions are imposed under state regulations, as well as imposition of safety regulation or land restoration requirements contrary to those required by state law, gives rise to operational conflicts and requires that the local regulations yield to the state interests. Bowen/Edwards, supra, 803 P.2d at 1060, such is the case with the setback, noise abatement, and visual impact provisions invalidated by the trial court here. Thus, the ordinance sections that the trial court invalidated are preempted on the basis of operational conflict."

- Robert L. Bayless, Jr.
President
- Neal Stanley
Immediate Past President
- William S. Bergner
Vice President
- Roger Biemans
Vice President
- Don DeCarlo
Vice President
- Jim Lightner
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- Tim Ficker
Treasurer
- Marc W. Smith
Executive Director
- Carla J. Wilson
Director of Public Affairs
- Natalie Garner
Director of Member Services
- Andrew Bremner
Director of Government Affairs
- Deena McMullen
Manager of Government and Public Affairs - MT, WY, ND, SD
- Grand D. Melvin
Manager of Government and Public Affairs - UT, CO, NM

Our overriding opinion is that La Plata County's attempts to regulate in these areas would be invalid. We are particularly concerned that such a large portion of this **\$350,000** Impact Report (funded by a **\$175,000** Department of Local Affairs Energy Impact Grant, **\$121,000** in La Plata County matching funds and **\$54,000** in kind services provided by the county) suggests options for regulating CBM development that are clearly not within the county's jurisdiction under Colorado law.

Moreover, current La Plata County land use regulations should be carefully reviewed for operational conflicts so that local regulations regarding oil and gas activities yield to the state interest, including the areas of setback, visual impacts and any reference to noise, which are preempted from local regulation. We believe that the portions of the Draft La Plata County Impact Report, which include recommendations and options regarding setbacks, noise and visual impacts, should not be used for comprehensive planning purposes, nor for the development of future oil and gas regulations. Out of respect to the county taxpayers, it seems appropriate to limit areas of county regulation to those that are acceptable under state statutes and the recent Colorado Court of Appeals decision.

1. The Draft CIR does not address the adequacy (or inadequacy) of existing regulations for avoiding or mitigating potential impacts. Many of the potential impacts identified in Section 5 of the report would be adequately avoided or mitigated through compliance with existing regulations. If the county or its contractor believes existing regulations are not adequate to address specific impacts or impacts in certain locations, those circumstances should be identified and discussed. But the linkage between potential impacts, existing regulations and the need for additional regulation is not established in the draft.
2. Many of the options for minimizing CBM development conflicts or impacts contained in Table 6-6 are not supported by the analyses in Section 5 of the Draft CIR. For example, one option to offset the eventual decline in CBM revenues is to "increase the mill levy for property taxes for oil and gas facilities." However, the Section 5.2 analysis concludes that "The most significant impact to revenues associated with CBM development is increased property tax revenues." and "In addition to net revenues gained over the 30-year period, the reduced portion from oil and gas revenues that result from the conclusion of the project may be offset by other sources." The final CIR should ensure that impact minimizing and mitigation options are supported by the assessment.
3. The Draft CIR identifies a wide range of potential impacts of CBM development, but it does not dedicate a corresponding effort to identifying the benefits of CBM development to La Plata County residents. This is particularly true for the contributions of the CBM industry to the La Plata County tax base; clearly, the CBM industry contributes far more in tax revenues than it receives in public services. Similarly, the measures that the CIR uses to portray the contribution of CBM to the La Plata County economy tend to minimize the important role that the industry plays. A balanced impact report should provide a realistic assessment of the contributions of the CBM industry to the La Plata County economy and tax base.

4. CBM industry impact monitoring and mitigation activities receive little attention in the Draft CIR. Examples of monitoring and mitigation programs include water well monitoring initiatives and operator repair or payments for access roads damaged by drilling and construction traffic. These efforts should be described and considered when determining the adequacy of existing mechanisms for avoiding and mitigating impacts of anticipated CBM development.
5. The role of landowners in the well and facility siting process similarly receives little attention in the Draft CIR. Operators enter into surface use agreements with landowners. In general, those agreements dictate how CBM development occurs on private surface. Moreover the damage payments that landowners receive is based in part on the value of land removed from other uses and offsets any effect on property values.

We specifically support the Energy Council comments in Attachments A and B provided to you. Because of some major concerns/errors/flaws in the CIR, we would like you to prepare a time line with procedures to address topics, for meetings and for corrections to this draft. If you do not plan to finish this CIR we need to know that, also.

Thank you for considering our comments. We have worked constructively with local elected officials and county departments on oil and gas matters and we look forward to continuing a cooperative effort to modify oil and gas regulations and this Draft CIR. We are an important contributor to the local economy, striving to develop cleaner energy and assist in achieving our nation's goal of greater energy independence.

Sincerely,



Grant D. Melvin
Manager of Government and Public Affairs
Colorado, Utah, and New Mexico